

10-8-91 Minutes

A regular meeting of the Council of the City of Bedford, Virginia, was held in the Council Hall of the Municipal Building at 7:30 p.m., October 8, 1991.

Members present: Mayor G. Michael Shelton; Councilman Larry D. Brookshier; Councilwoman Joanne A. Grahame; Councilman Payton M. Otey; Vice Mayor John M. Owen, III; Councilman Ronnie C. Rice (arrived at 7:35 p.m.); and Councilman James A. Vest.

Members absent: None.

Staff present: City Manager Jack A. Gross; City Attorney W. W. Berry, IV; and Clerk of the Council Teresa W. Hatcher.

Mayor Shelton opened the meeting and led all present in saying the Pledge of Allegiance to the Flag.

Mayor Shelton declared that the minutes of a regular Council meeting held on September 24, 1991, were approved as mailed.

Mayor Shelton spoke of the success of the recent Centerfest celebration, which was sponsored by Bedford Main Street, Inc.

Mayor Shelton reminded members of Council of upcoming events in the community. The Mayor also gave a brief account of the recent Virginia Municipal League Convention.

The Clerk of Council read aloud the following public hearing notice:

PUBLIC HEARING NOTICE

Notice is hereby given of a public hearing to be held by the City Council of the City of Bedford, Virginia, at 7:30 p.m. on October 8, 1991, at the City Municipal Building, Council Hall, 215 E. Main Street for the purpose of considering a request for the following:

To consider a conditional use request for property located in a B-1 Limited Business District to be used as a combination of business and residence. The property is located at 317 Crenshaw Street.

The application is on file in the Office of Community and Economic Development.

The request is being made by Mr. R. N. Hillsman, III, of Hillsman Properties, owner.

Anyone who is in favor of or opposed to the request will have an opportunity to express their view at this hearing.

By the Authority of the Council

of the City of Bedford

Mayor Shelton opened the public hearing at 7:48 p.m. As there were no comments, the Mayor closed the public hearing at 7:49 p.m.

The City Manager reported that the Planning Commission, at its regular meeting, held on October 3, unanimously approved the recommendation that City Council approve the conditional use request by Hillsman Properties, with the condition that less than one-half of the lower level be used as a residence.

Councilman Brookshier moved that Council issue a permit allowing the street level main floor to be used partly for residential purposes, provided at least one-half of the main floor is reserved for business purposes and provided the remainder of the main floor and the second floor are used as a single family residence only. The motion was seconded by Councilman Rice, voted upon and carried unanimously.

Council proceeded to have a joint meeting with the City School Board.

Mr. Conley Wallace, principal of Bedford Middle School, spoke regarding a middle school program that would include the sixth grade. Dr. John Kent, Superintendent of Schools, spoke regarding the conceptual framework of a sixth through eighth grade program.

Discussion ensued.

Mayor Shelton stated that City Council and the City School Board will have quarterly meetings.

Mayor Shelton declared a five minute recess from 9:37 p.m. until 9:42 p.m.

The City Manager stated that the City has received a letter from Mr. Byron B. Wenger, President of Shenandoah Hydro Company of Woodstock, Virginia, who is interested in purchasing the old generating equipment at the City's hydroelectric plant at Snowden and removing it at his expense. Mr. Gross indicated that this equipment has not been used since the flood of 1985; and it is estimated that the cost to repair this equipment is approximately \$200,000. Mr. Gross stated that the Electric Committee has met to review Mr. Wenger's proposal and concurred in recommending that Council consider the sale of the equipment.

Councilwoman Grahame moved that Council authorize the City Manager to advertise for bids for the sale and removal of the old generating equipment at the hydroelectric plant. The motion was seconded by Councilman Vest, voted upon and carried unanimously.

On motion by Councilman Brookshier, seconded by Councilwoman Grahame, voted upon and carried unanimously, Council waived the reading of the following proposed ordinance regarding the City Erosion and Sediment Control Program.

An Ordinance to Amend and Re-enact Chapter 5, Article III of the City Code which establishes the City Erosion and Sediment Control Program.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD AS FOLLOWS:

Section 1. Chapter 5, Article III of the City Code is hereby amended and re-enacted as follows:

ARTICLE 3. EROSION AND SEDIMENT CONTROL SECTION

Section 5-19. Establishment of City Erosion and Sediment Control Program.

The City hereby establishes a soil erosion and sediment control program consistent with the State Erosion and Control Law (Title 10.1, Chapter 5, Article 4, Code of Virginia, as amended).

Section 5-20. Administration and Enforcement.

The Director of Community and Economic Development or such officer designated by him in writing shall be the City's erosion and sediment control administrator and shall be responsible for the City of Bedford Soil Erosion and Sediment Control Program. The administrator is authorized and empowered to administer and enforce the applicable provisions of State law and the provisions herein, to include receiving applications, inspecting premises, issuing permits which are in conformance with the provisions of this Ordinance and of State law, issuing regulations, issuing stop work orders on behalf of the City, and bringing of legal actions, including injunction, abatement, or other appropriate actions or proceedings to insure compliance with the provisions herein.

Section 5-21. Rules and Regulations.

The Virginia Erosion and Sediment Control Handbook and the state regulations in effect on July 1, 1991 are hereby adopted by reference as the regulations of the City of Bedford Erosion and Sediment Control Program. The local administrator shall from time to time amend such regulations by incorporating any changes in the Virginia Erosion and Sediment Control Regulations and in the Virginia Erosion and Sediment Control Handbook, and he from time to time may adopt such supplemental rules and regulations as may be appropriate to implement the provisions of this Chapter not inconsistent with State law or other ordinances of the City. A current copy of the Virginia Erosion and Sediment Control Handbook, the State regulations, and any supplemental regulations issued by the Administrator shall be kept on file in the office of the Community and Economic Development of the City of Bedford and shall be there available to the public for inspection and in use during all regular business hours.

Section 5-22. Plan and Permit Required for Land-Disturbing Activities.

No person shall engage in any "land-disturbing activity" (as defined in Section 10.1-560 of the Code of Virginia), in the city until he has acquired a land-disturbing permit. Issuance of such a permit shall be conditioned upon approval of an erosion and sediment control plan by the administrator. Erosion and sediment control plans must satisfy the Virginia Erosion and Sediment Control Regulations and the standards and specifications of the Virginia Erosion and Sediment Control Handbook, as amended. At least three (3) copies of the erosion and sediment control plan, consisting of narrative, calculations and site plan prepared in accordance with the erosion and sediment control manual, must be submitted with the application for a land-disturbing permit.

It is the intent of this Article to be an adjunct to the building code, subdivision and zoning ordinances, and other land development regulations of the City, which apply to the subdivision and development of land within the jurisdiction of the City or to development on previously subdivided land within the jurisdiction of the City.

The permit issued herein may be incorporated into any building permit or other permit issued by the Director of the Department of Community and Economic Development of the City of Bedford in respect to activities requiring such permits which also include "land-disturbing activities" required herein.

The land-disturbing activity must begin within six (6) months of the issuance of said permit or the permit shall become invalid.

Section 5-23. Application and Fee for Permits.

Application for a land-disturbing permit shall be made on a form prescribed and furnished by the administrator and each application shall be accompanied by a payment to the City of a fee to be computed at a rate of twenty-five dollars (\$25.00) per acre or portion thereof of disturbed area not to exceed one-thousand dollars (\$1,000.00)

Section 5-24. Performance guarantees.

A. All control measures required by the provisions of this chapter shall be undertaken at the expense of the owner or his agent; and pending such actual provision there, the owner or his agent shall execute and file with the administrator, prior to issuance of the permit, a performance bond, cash escrow, or letter of credit, in an amount determined by the administrator equal to the approximate total cost of providing erosion and sediment control improvements with surety approved by the administrator guaranteeing that the required control measures will be properly and satisfactorily undertaken.

B. Should it be necessary for the City to take such conservation action, the City of Bedford may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the City Engineering Department or the City Department of Community and Economic Development, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated.

C. When the land-disturbing activity is one acre or less and public improvements are not required by the city land development regulations, the requirement for a surety may be waived by the administrator.

Section 5-25. Enforcement.

The Administrator shall have all necessary authority to administer and enforce this Ordinance including all powers provided in Title 10.1, Chapter 5, Article 4 of the Code of Virginia, as amended, and in this Ordinance, including specifically the authority to issue in the name of the City Manager stop work orders as provided herein.

A. The City reserves the right to inspect any premises in which a land disturbing activity is being conducted without prior notice. If the Administrator determines that there is a failure to comply with the approved plan, notice shall be served upon the person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification or by delivery at the site of the land disturbing activities to the agent or

employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall require the permittee or person responsible for carrying out the plan to correct any deficiencies within twenty four hours of receipt of said notification. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Ordinance.

B. Where an alleged violator has failed to comply with a notice to comply, the administrator may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective actions have been taken. Where the alleged non compliance is causing or is imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such a stop-work order may be issued whether or not the alleged violator has been issued a notice to comply as specified herein above, and the stop-work order shall be issued in such case in conjunction with the notice to comply. Any stop-work order shall be served in the same manner as a notice to comply.

C. The City Attorney upon request of the Administrator or other officer of the City may take legal action or request the Commonwealth's Attorney to take legal action to enforce the provisions of this article.

Section 5-26. Penalties.

A. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating, causing, or permitting the violation of any of the provisions of this article, including the provisions of Section 5-22 and of Section 5-25, shall be guilty of a misdemeanor and subject to a fine not exceeding \$1,000.00 or thirty (30) days imprisonment for each violation, or both.

B. The administrator may apply to the Circuit Court to enjoin a violation or threatened violation without the necessity of showing that an adequate remedy at law does not exist.

C. In addition to any criminal penalties provided under this Ordinance, any person who violates any provisions of this Ordinance may be liable to the City of Bedford in a Civil Action for damages.

D. Without limiting the remedies which may be obtained in this Section, any person violating or failing, neglecting or refusing to obey any injunctions, mandates or other remedy obtained pursuant to this chapter shall be subject in the discretion of the Court to a civil penalty not to exceed \$2,000.00 for each violation.

E. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the administrator or any condition of the permit or any provision of this Chapter, the administrator may issue against such person an Order for the payment of Civil charges for violations in specific sums, not to exceed the limit specified in subsection D of this Section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection D.

F. Compliance with the provisions of this Chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

Section 5-27. Liability of Persons Enforcing the Erosion and Sediment Control

Regulations.

Any officer or employee charged with the enforcement of the erosion and sediment control regulations acting in good faith and without malice to the City in the discharge of his duties shall not thereby render himself liable personally and he is hereby relieved from all personal liability from any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of his duties. Any suit brought against any city officer or employee because of such act or omission performed by him in the enforcement of any provisions of the erosion and sediment control regulations shall be defended by the city attorney until final determination of the proceedings.

This Ordinance shall become effective upon publication one time, immediately following its passage, in some newspaper published in the City or upon posting at three or more public places in the City for one week, as required by Section 19 of the City Charter.

On motion by Councilwoman Grahame, seconded by Councilman Brookshier, voted upon and carried unanimously by the following roll call vote, Council adopted the Ordinance to Amend and Re-enact Chapter 5, Article III of the City Code which establishes the City Erosion and Sediment Control Program:

Councilman Brookshier	aye
Councilwoman Grahame	aye
Councilman Otey	aye
Vice Mayor Owen	aye
Councilman Rice	aye
Councilman Vest	aye
Mayor Shelton	aye

Council considered a request from the County Administrator that East Main Street between Court Street and North Bridge Street be closed for approximately 45 minutes on October 20, 1991, during the dedication and ribbon cutting portions of the Grand Opening festivities for the new Bedford County Administration Building.

Councilman Brookshier moved that Council approve the request to close East Main Street between Court Street and North Bridge Street from 2:45 p.m. to 3:30 p.m. on Sunday, October 20, 1991. The motion was seconded by Councilman Rice, voted upon and carried unanimously.

The City Manager stated that the staff members of each of the jurisdictions participating in the Municipal Electric Power Association of Virginia (MEPAV) [Bedford, Blacksburg, Blackstone, Bristol, Culpeper, Danville, Elkton, Franklin, Front Royal, Harrisonburg, Manassas, Martinsville, Radford, Richlands, Salem and Wakefield] are recommending that the jurisdictions enter into a formal agreement to provide emergency assistance to any member jurisdiction. The jurisdiction requiring help will reimburse the jurisdiction(s) providing such help at the rates normally paid by the providing jurisdiction(s). Mr. Gross stated that the agreement provides no hold harmless clauses and that each jurisdiction will be responsible for any negligent acts of its own employees.

Councilman Vest moved that Council approve the Municipal Electric Power Association of Virginia's agreement for emergency assistance and authorize the Mayor to execute the document on behalf of the City of Bedford. The motion was seconded by Councilwoman Grahame. Mayor Shelton noted a correction that needed to be made in the proposed agreement. The City Manager stated that the correction would be made. The motion was then voted upon and carried unanimously.

Councilman Brookshier moved that Council adjourn into executive session pursuant to Section 2.1-344(a)(3), Real Estate, of the Code of Virginia of 1950, as amended, for Discussion of Purchase of Real Estate for the Buffer Zone for the Wastewater Treatment Plant Modification. The motion was seconded by Councilwoman Grahame, voted upon and carried unanimously by the following roll call vote:

Councilwoman Grahame	aye
Councilman Otey	aye
Vice Mayor Owen	aye
Councilman Rice	aye
Councilman Vest	aye
Councilman Brookshier	aye
Mayor Shelton	aye

Council adjourned into executive session at 9:47 p.m. Non-council members attending were: City Manager Gross, City Attorney Berry, and Clerk of the Council Hatcher.

Council reconvened into open session at 10:25 p.m.

The Clerk of Council read aloud the following proposed resolution:

BE IT RESOLVED that the Council of the City of Bedford hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Council.

On motion by Councilwoman Grahame, seconded by Councilman Otey, voted upon and carried unanimously by the following roll call vote, Council approved the resolution:

Councilman Otey	aye
Vice Mayor Owen	aye
Councilman Rice	aye

Councilman Vest	aye
Councilman Brookshier	aye
Councilwoman Grahame	aye
Mayor Shelton	aye

Mayor Shelton adjourned the meeting at 10:27 p.m.